DREW BRERETON
Deputy Director | Chief Counsel, Bar No. 213277
KYLE C. MONSON
Assistant Chief Counsel, Bar No. 251166
CHRISTOPHER B. LEE
Attorney III, Bar No. 248407
CALIFORNIA DEPARTMENT OF
MANAGED HEALTH CARE
980 9th Street, Suite 500
Sacramento, CA 95814-2725
916-323-0435 - Phone
916-323-0438 - Fax
Attorneys for Department of Managed Health Care

BEFORE THE DEPARTMENT OF MANAGED HEALTH CARE

OF THE STATE OF CALIFORNIA

IN THE MATTER OF:

EMPLOYEE HEALTH SYSTEMS MEDICAL GROUP, INC.

ADVENTIST HEALTH PLAN, INC.
DMHC License No. 933 0508

AETNA HEALTH OF CALIFORNIA, INC.
DMHC License No. 933 0176

BLUE CROSS OF CALIFORNIA, INC.
DMHC License No. 933 0303

CARE 1ST HEALTH PLAN
DMHC License No. 933 0326

CIGNA HEALTHCARE OF CALIFORNIA, INC.
DMHC License No. 933 0152

FRESNO-KINGS-MADERA REGIONAL AUTHORITY
DMHC License No. 933 0484

HEALTH NET OF CALIFORNIA, INC.
DMHC License No. 933 0300

LOCAL INITIATIVE HEALTH AUTHORITY FOR L.A. COUNTY
DMHC License No. 933 0355

Enforcement Matter No.: 17-1703

ORDER TO CEASE AND DESIST

(Health & Saf. Code,, §§ 1341, 1344, 1367.02, subds. (a) & (d), & 1391.)

MOLINA HEALTHCARE OF CALIFORNIA, INC.
DMHC License No. 933 0322

Respondents.

The Director of the Department of Managed Health Care, by and through her designee, Deputy Director and Chief Counsel, Drew Brereton ("Complainant"), after investigation, determines as follows:

I. PARTIES AND JURISDICTION

1. The Department of Managed Health Care ("Department") is the state regulatory agency charged with administering and enforcing the Knox-Keene Health Care Service Plan Act of 1975, as amended (Health & Saf. Code, § 1340, et seq.), and title 28 of the California Code of Regulations (collectively referred to herein as the "Knox-Keene Act").

2. Respondent **Adventist Health Plan, Inc.**, is now, and has been since February 14, 2014, a full service health care service plan licensed by the Department (License No. 933 0508), and is subject to the Knox-Keene Act. Its principal place of business is located at: 2100 Douglas Boulevard, Roseville, California 95661.

3. Respondent **Aetna Health of California, Inc.**, is now, and has been since August 6, 1981, a full service health care service plan licensed by the Department (License No. 933 0176), and is subject to the Knox-Keene Act. Its principal place of business is located at: 2850 Shadelands Drive, Walnut Creek, California 94598.

4. Respondent **Blue Cross of California, Inc.**, is now, and has been since January 7, 1993, a full service health care service plan licensed by the Department (License No. 933 0303), and is subject to the Knox-Keene Act. Its principal place of business is located at: 1 Wellpoint Way, Thousand Oaks, California 91362.

5. Respondent **Care 1st Health Plan** is now, and has been since November 1, 1995, a full service health care service plan licensed by the Department (License No. 933 0326), and is subject to the Knox-Keene Act. Its principal place of business is located at 601 North Potrero Grande Drive, Monterey Park, California 91755.

6. Respondent **Cigna Healthcare of California, Inc.**, is now, and has been since March 23, 1979, a full service health care service plan licensed by the Department (License No. 933 0152), and is subject to the Knox-Keene Act. Its principal place of business is located at 400 North Brand Boulevard, Suite 400, Glendale, California 91203.

7. Respondent **Fresno-Kings-Madera Regional Authority**, also known as CalViva Health, is now, and has been since December 30, 2010, a full service health care service plan licensed by the Department (License No. 933 0484), and is subject to the Knox-Keene Act. Its principal place of business is located at 7625 North Palm Avenue, Suite 109, Fresno, California 93711.

8. Respondent **Health Net of California, Inc.**, is now, and has been since March 7, 1991, a full service health care service plan licensed by the Department (License No. 933 0300), and is subject to the Knox-Keene Act. Its principal place of business is 21281 Burbank Boulevard, Woodland Hills, California 91367.

9. Respondent **Local Initiative Health Authority for L.A. County**, dba L.A. Care Health Plan, is now, and has been since April 1, 1997, a full service health care service plan licensed by the Department (License No. 933 0355), and is subject to the Knox-Keene Act. Its principal place of business is 1055 West 7th Street, Los Angeles, California 90017.

10. Respondent **Molina Healthcare of California** is now, and has been since March 14, 1994, a full service health care service plan licensed by the Department (License No. 933 0322), and is subject to the Knox-Keene Act. Its principal place of business is 200 Oceangate, Suite 100, Long Beach, California 90802.

II. STATUTORY AUTHORITY

11. Pursuant to Health and Safety Code section 1341, the Director is vested with the responsibility to administer and enforce the Knox-Keene Act. The Knox-Keene Act regulates health plans and the health plan business in California to protect and promote the interests of health plan enrollees. The Knox-Keene Act regulates any provider or subcontractor providing health or other services to a plan, any person with whom a health plan has made arrangements for services, or any person who engages in any act or practice in violation of the Knox-Keene Act.

(Health & Saf. Code, § 1341.)

12. Pursuant to Health and Safety Code section 1391, the Director is vested with the power to issue an order directing a plan, solicitor firm, or any representative thereof, a solicitor, or any other person to cease and desist from engaging in any act or practice in violation of the provisions of the Knox-Keene Act.

13. The Director may adopt orders as are necessary to carry out the provisions of the Knox-Keene Act. (Health & Saf. Code, § 1344, subd. (a).) This includes an order directing a health plan to cease and desist from engaging in any act or practice in violation of the Knox-Keene Act. (Health & Saf. Code, § 1391, subd. (a).)

14. A health plan which delegates "any services it is required to perform to its medical groups, independent practice associations, or other contracting entities" cannot waive its legal obligations under the Knox-Keene Act. (Health & Saf. Code, § 1367, subd. (j).)

15. "Economic profiling" is "any evaluation of a particular physician, provider, medical group, or individual practice association based in whole or in part on the economic costs or utilization of services associated with medical care provided or authorized by the physician, provider, medical group or individual practice association." (Health & Saf. Code, § 1367.02, subd. (d).)

16. Each health care service plan that uses economic profiling is required to file with the Department a description of any policies and procedures related to economic profiling utilized by the plan and its medical groups and individual practice associations. The filing must, among other things, describe how these policies and procedures are used in utilization review, peer review, incentive and penalty programs, and in provider retention and termination decisions. The filing must also indicate how the economic profiling activities avoid being in conflict with Health and Safety Code section 1367, subdivision (g), which requires each plan to demonstrate that medical decisions are rendered by qualified medical providers, unhindered by fiscal and administrative management. (Health & Saf. Code, § 1367.02, subd. (a).)

III. STATEMENT OF FACTS

17. Respondents, and each of them, maintain or maintained contracts with Employee

Health Services Medical Group, Inc. (EHS), a for-profit corporation. Respondents delegate numerous functions to EHS to perform specified functions pursuant to its contracts with Respondents, including reviewing and authorizing requests for coverage for health care services (utilization review), claims payment, quality assurance, provider contract administration, and provider credentialing. EHS subcontracts these functions exclusively to SynerMed, Inc. ("SynerMed"), which performs nearly all of its medical and administrative functions, including utilization review, quality assurance, provider contract administration, provider credentialing, provider claims administration, capitation management, medical economics/data analysis, financial management and accounting, general contracts administration, and governmental relations.

18. Under its arrangement with EHS, Respondents' enrollees typically access care through EHS's network of contracted primary care providers ("PCP"s). When a PCP determines that it is necessary for Respondents' enrollees to obtain specialty care, the PCP will submit a request for authorization for the enrollee to see a specialist. The request is made to SynerMed, which processes these requests for authorization on EHS's behalf and maintains the ability to approve, modify, or deny these requests. Without an authorization, EHS will not provide coverage for care from specialists.

19. As part of its administration of the EHS provider network, SynerMed provides an electronic online provider portal where contracted PCPs can access and view the available EHS contracted medical specialists in their region, and from which those PCPs can select or request a specific specialist when submitting a request for authorization for specialist services.

20. On June 21, 2017, SynerMed's CEO, James P. Mason, issued a "Contracting Playbook" in an e-mail which listed five directives aimed at lowering specialist costs for EHS. These directives included: "Re-narrow the specialty network via termination and removing them from the portal."

21. In implementing the "Contracting Playbook", SynerMed staff was affirmatively directed to hide, or "suppress," providers from the referral system based in whole or in part on the cost of the services rendered by those providers. Using a data analytics program called "Tableau," SynerMed Provider Networking staff examined EHS's provider list to identify and suppress

"high-cost" providers, beginning with cardiologists, within EHS's network. Additional specialists identified to be narrowed included: diagnostic radiologists, dialysis providers, hematologists/oncologists, nephrologists, ophthalmologists, and rheumatologists.

22. In suppressing providers from SynerMed's referral system, SynerMed actively and secretly restricted "high-cost" specialists who maintained contracts with EHS from delivering care to enrollees assigned to EHS. These specialists continued to maintain contracts with EHS to provide services. However, as a practical matter, enrollees assigned to EHS by Respondents had no access to these numerous suppressed providers, which SynerMed unilaterally deemed to be high-cost. As a result of this conduct, SynerMed narrowed the specialty network available to Respondents' enrollees and to EHS's contracted PCPs.

23. EHS, through SynerMed, therefore redirected Respondents' enrollees to a limited set of specialty providers through an otherwise undisclosed, narrow network, restricted substantially based on cost.

24. The Department has conducted a diligent search of Department records and has found that none of the Respondents have previously disclosed the above-described and ongoing economic profiling of EHS's provider network through SynerMed.

IV. FINDINGS

25. Respondents, and each of them, are licensees subject to the Department's jurisdiction for purposes of compliance with the Knox-Keene Act, and are responsible for continuous compliance with the Knox-Keene Act.

26. SynerMed took steps to narrow EHS's provider networks by restricting access to services and removing the ability of patients to be seen by certain contracted providers who were suppressed from EHS's specialist network based in whole or in part on the cost of the provision of services. As described herein, Respondents, through EHS, have engaged in the practice of economic profiling.

27. None of the Respondents have filed a proper economic profiling policy describing the above-described practice of restricting high-cost specialty providers from EHS's network based in whole or in part on cost, in violation of Health and Safety Code section 1367.02, subdivision (a).

28. In further violation of Health and Safety Code section 1367.02, subdivision (a), Respondents have failed to demonstrate that EHS's economic profiling practices are consistent with Health and Safety Code section 1367, subdivision (g), which requires that medical decisions are rendered by qualified medical providers, unhindered by fiscal and administrative management.

29. As a result of EHS's continued use of an economic profiling policy not filed with the Department, Respondents' provision of health care services through EHS constitutes an ongoing violation of Health and Safety Code section 1367.02, subdivision (a).

V. ORDER

THEREFORE, the Director of the Department, by and through her designee, Deputy Director and Chief Counsel Drew Brereton, pursuant to Health and Safety Code sections 1344 and 1391, **ORDERS AS FOLLOWS:**

30. Respondents, and each of them, shall cease and desist from engaging in their presently ongoing violations of Health and Safety Code section 1367.02, subdivision (a), by taking immediate steps to terminate their contracts which contain assignments of risk to EHS, including all fiscal, network, and any other administrative responsibilities.

31. By **January 3, 2018**, Respondents, and each of them, shall file a transition plan ("Transition Plan") with the Department's Office of Enforcement via e-mail to christopher.lee@dmhc.ca.gov and kyle.monson@dmhc.ca.gov. The Transition Plan shall provide a definitive timeline for the orderly removal of enrollees from EHS. The Transition Plan shall include:

a. A description of the steps that Respondent has taken or will take to sever its contractual relationship with EHS, including a date certain by which Respondent will file a block transfer with the Department's Block Transfer Unit, if necessary, and including a date certain by which Respondent will terminate its contractual relationship with EHS;

b. A description of the steps that Respondent has implemented, and will implement, to ensure that clinically appropriate care continues to be provided to enrollees assigned to EHS in the brief period that Respondent remains contracted with EHS;

c. A description of the steps that Respondent has implemented, and will implement, to ensure that continuity of care is maintained as enrollees transition from EHS; and

d. A description of the steps that Respondent has implemented, and will implement, to ensure that EHS is not utilizing economic profiling to restrict its network of specialists in the brief period that Respondent remains contracted with EHS.

32. By **February 5, 2018**, Respondents, and each of them, shall file a final proof of compliance ("Final Proof of Compliance") with this ORDER with the Department's Office of Enforcement via e-mail to christopher.lee@dmhc.ca.gov and kyle.monson@dmhc.ca.gov. The Final Proof of Compliance shall describe and affirm the cessation of Respondents' relationship with EHS.

33. This ORDER shall be effective as of the date of this ORDER, and shall continue in full force and effect until further ORDER by the Director.

34. This ORDER is solely intended to abate the present ongoing violation and shall not be the exclusive remedy to be exercised by the Department, pursuant to Health and Safety Code section 1394.

MICHELLE ROUILLARD
Director
Department of Managed Health Care

Dated: December 26, 2017

DREW BRERETON
Deputy Director | Chief Counsel
Office of Enforcement